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April 22, 1994 APR 22 1994-12 45 PM

New Recordation No. STATE COMMERCE COMMISSION

0100195036

RECEIVED
OFFICE OF THE
SECRETARY
APR 22 12 37 PM '94
LICENSING BRANCH
FILED 1425

Dear Mr. Strickland:

On behalf of Atlantic & Western Railway, Limited Partnership, I submit for filing and recording under 49 U.S.C. § 11303(a) and the regulations promulgated thereunder, executed counterparts of a primary document, not previously recorded, entitled CSX Transportation, Inc. Car Lease ("Lease") made as of April 1, 1994.

The parties to the enclosed Lease are:

Atlantic & Western Railway, Limited Partnership Suite 302 100 Professional Park Carrollton, GA 30117	- LESSOR
CSX Transportation, Inc. 500 Water Street Jacksonville, FL 32202	- LESSEE

The said Lease, among other things, acts to lease to the Lessee by the Lessor the forty (40) boxcars listed in the Schedule attached to the Lease.

The equipment covered by the instant Lease is as identified in the Schedule thereto.

A short summary of the Lease to appear in the ICC Index is as follows:

"Covers 40 Boxcars CSXT 134215-134254."

Enclosed is a check in the amount of eighteen dollars (\$18.00) in payment of the filing fee.

Once the filing has been made, please return to bearer the stamped counterpart(s) of the document not required for filing purposes, together with the fee receipt, the letter from the ICC acknowledging the filing, and the two extra copies of this letter of transmittal.

Very truly yours,

Allen H. Harrison, Jr.

Allen H. Harrison, Jr.
Attorney for Atlantic & Western Railway, Limited
Partnership for the purpose of this filing.

Honorable Sidney L. Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423
Enclosures
BY HAND

8376-020

Allen H. Harrison, Jr.
C. Overly

Interstate Commerce Commission
Washington, D.C. 20423

4/22/94

OFFICE OF THE SECRETARY

Allen H. Harrison Jr.
Donelan Cleary Wood & Maser
1275 K St. N.W. Suite 850
Washington, D.C. 20005-4078

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions
of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303,
on 12/30/93 at 12/ 22/94 , and assigned
recordation number(s). 18781

Sincerely yours,

Secretary
SIDNEY L. STRICKLAND, JR.

Enclosure(s)

RECORDATION NO. **18781** FILED 1425

APR 22 1994 -12 45 PM

INTERSTATE COMMERCE COMMISSION

**CSX TRANSPORTATION, INC.
CAR LEASE**

THIS CAR LEASE (Lease) dated and effective as of April 1, 1994, is by and between ATLANTIC & WESTERN RAILWAY, LIMITED PARTNERSHIP (Lessor) and CSX TRANSPORTATION, INC. (Lessee).

1. Capitalization and Titles. Capitalized words are used herein for the convenience of the parties. The specific definitions or uses of such words are contained in the body of the Lease. All titles to the paragraphs are for the information and convenience of the parties and are not substantive.

2. Cars. Lessor agrees to furnish, and Lessee agrees to accept, subject to the provisions of this Lease, forty (40) "seventy ton" plug door boxcars with belt rails and 15 inch end of car cushioning (the "Cars"). Only Cars that are accepted by Lessee are subject to this Lease. A complete list of all accepted Cars will be exchanged between the parties, (SCHEDULE ATTACHED)

3. Term. The initial term of this Lease is three (3) years, beginning April 1, 1994, or the date of acceptance for Cars that are accepted, and continuing through March 31, 1997. Thereafter, Lessee may renew the term for up to two (2) additional terms of one (1) year each, provided that notice of renewal is extended to Lessor not later than ninety (90) days prior to the end of the then current term. Lessee is granted the option of reducing the number of Cars in this Lease by ten percent (10%) on April 1 of each year of this Lease, beginning April 1, 1995, by giving Lessor notification at least sixty (60) days' prior to each anniversary date.

4. Transfer and Use. Lessor agrees to deliver the Cars to Lessee. Lessee agrees to return the Cars to Lessor at interchange points on Lessee's lines as designated by Lessor. Lessor is solely responsible for all linehaul, switching and accessorial charges applicable to the movement of Cars to Lessee's interchange point at the onset of the Lease and after Lessee's delivery of Cars to the designated interchange point after the termination of the Lease. Lessee is responsible for all similar charges incurred in returning the Cars to the designated interchange points. Lessee agrees to use the Cars exclusively in its own service and interchange service with other railroads, and shall have full authority to direct the movement of the Cars to any location in the continental United States, Mexico and Canada.

5. Rental. Lessee shall pay Lessor a rental of \$305.00 per Car per month for each Car accepted by Lessee. Payments are due semi-annually in arrears on January 1 and July 1 of each year in the amount of \$1,830.00 per Car beginning July 1, 1994, for all

Cars accepted on or prior to that date, or the actual date of acceptance, if later. Rental shall cease and be prorated as of the date of withdrawal of any Car from this Lease pursuant to the Destruction of Car and Car Modification paragraphs.

6. Incorporation of Documents. Except as otherwise expressly provided herein, the parties agree to incorporate and be governed by the provisions of the Field Manual of the AAR Interchange Rules, AAR Circular No. OT-5 and 49 CFR Parts 215, 231 and 232, all as amended, supplemented or superseded throughout the term of this Lease.

7. Maintenance and Repair. The Cars are leased to Lessee on a "net" basis. Lessee shall perform all necessary maintenance and repairs to the Cars during the Lease term at the expense of Lessee.

8. Inspection. Each of the Cars will be inspected by the parties at the beginning and ending of this Lease at times and locations as mutually agreed between the parties. The condition of each Car will be noted on a joint inspection certificate (JIC). Should either party waive inspection, the records of the other party shall control. (A) All Cars must be delivered to Lessee in the following condition: (1) empty, (2) in good operating status, (3) acceptable as being capable of immediate loading and transportation of the intended commodities, and (4) suitable for interchange in accordance with the Interchange Rules of the Association of American Railroads (AAR Rules). (B) All Cars will be returned in interchange condition subject to reasonable wear and tear, possible cleaning and free of any damage due to unfair usage, as contained in AAR Rule 95. (C) If a Car is in need of repair prior to acceptance for delivery or return, a separate inspection will be held after repairs have been made. Should either party waive inspection, the records of the other party will control regarding the condition of the Car on that date.

9. Car Hire Charges. Lessee shall collect and retain the car hire charges (time and mileage) earned by the Cars, subject to all applicable tariffs, circulars and contracts.

10. Destruction of Car. Any Car that is damaged or destroyed beyond economic repair will be deleted from this Agreement as of the date of destruction. If the damage or destruction occurred while on Lessee's lines, Lessee will pay Lessor the amount due under the casualty schedule attached as an exhibit to this Lease. If the damage or destruction occurred while on another railroad's lines, Lessor will seek payment from that railroad pursuant to AAR Interchange Rule 107. If payment is not received within six (6) months of the date of destruction, Lessee will pay Lessor the amount due under the casualty schedule. Lessor and Lessee will still pursue collection from the responsible

railroad and Lessee will receive a credit for payments that are received, up to the casualty schedule amount. No replacement Car will be furnished unless agreed upon by both parties.

11. DISCLAIMER OF WARRANTIES. LESSOR, NOT BEING THE MANUFACTURER OF THE CARS, NOR THE MANUFACTURER'S AGENT, HEREBY EXPRESSLY DISCLAIMS AND MAKES TO LESSEE NO WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR OTHERWISE. LESSOR HEREBY ACKNOWLEDGES THAT ANY MANUFACTURERS AND/OR SELLERS WARRANTIES ARE FOR THE BENEFIT OF BOTH LESSOR AND LESSEE.

12. Lettering. Lessee, at its expense, shall apply its own reporting marks and numbers and AEI tags to all Cars that are accepted. Lessor, at its expense, shall remove Lessee's reporting marks and numbers and AEI tags once this Lease has expired.

13. Sublease. Lessee may sublease any of the Cars to any third party of its choosing. Notwithstanding any such sublease, Lessee shall continue to remain liable to Lessor under all conditions and terms of this Lease and such sublease shall be subject and subordinate to this Lease. Except for the rights contained in this Lease, no right, title or interest in any of the Cars shall vest in Lessee by reason of this Lease.

14. Default. If Lessee shall fail to perform any of its obligations hereunder, Lessor shall provide written notice to Lessee, specifying the alleged failure. If such failure has not been substantially corrected within: (A) ten (10) days for payment of Rent or (B) forty-five (45) days for any other alleged failure, Lessor, at its sole election, may terminate this Lease upon three (3) days' written notice. Such termination will not relieve Lessee of its obligation for the rental payment for such Cars nor relieve Lessor of its obligation to mitigate any alleged damages resulting from such failure by Lessee, including but not limited to all reasonable attempts to relet the Cars for the remaining term of this Lease.

15. Assignment of Lease: This Lease shall be assignable by Lessor and by its assigns without the consent of Lessee, but Lessee shall not be obligated to any assignee of Lessor except upon written notice of such assignment from Lessor or such assignee. Notwithstanding anything to the contrary contained herein, the obligation of Lessee to pay Rental to such assignee shall be absolute and unconditional and shall not be affected by any circumstances whatsoever and such payment shall be made without interruption or abatement notwithstanding any event or circumstance whatsoever, including, without limitation, the bankruptcy or insolvency of Lessee or any disaffirmance of this Lease by or on behalf of Lessee, and notwithstanding any defense, setoff, recoupment or counterclaim or any other right whatsoever, whether

by reason of breach of this Lease or otherwise which Lessee may now or hereafter have against Lessor and whether any such event shall be by reason of any act or omission of Lessor or otherwise (except as previously excluded in this paragraph); provided however, that nothing herein contained shall effect any right of Lessee to enforce against Lessor any claim which Lessee may have against Lessor in any manner other than by abatement, attachment, or recoupment of interference with, or set-off, counterclaim or defense against, the aforementioned payments to be made to such assignee. Lessee's undertaking herein to pay the Rental to and to perform the other obligations of Lessee hereunder for the benefit of an assignee of Lessor shall constitute a direct, independent and unconditional obligation of Lessee to said assignee. Lessee also acknowledges and agrees that any assignee of Lessor's interest in this lease shall have the right to exercise all rights, privileges and remedies (either in its own name or in the name of Lessor) which by the terms of this lease are permitted to be exercised by Lessor.

16. Return Tender And Storage. Lessee shall gather the Cars at the end of the term of this Lease and shall notify Lessor that the Cars are available for inspection. The aforementioned notice shall: (A) constitute the return tender of the Cars; (B) terminate any rental payments; and (C) begin the storage period. Lessee shall provide free storage for the Cars for up to sixty (60) days from the date of return tender, after which a charge of \$3.00 per Car per day shall apply until receipt of forwarding instructions from Lessor. Lessee shall not be responsible for loss or damage sustained to the Cars during the storage period, unless due to the sole negligence of Lessee.

17. Taxes. Lessee agrees to assume responsibility for and to pay any applicable sales, use or similar taxes resulting from the lease or use of the Cars. Lessee may protest or otherwise contest against the taxes for which it is responsible for payment to the taxing authority, and agrees to pay any penalty or interest, if unsuccessful. Notwithstanding any other provisions of this Lease, Lessor is solely responsible for the payment of all income taxes assessed against it for any Rental payments or other income received or deductions taken by it in connection with this Lease.

18. Title, Possession and Assignment. Lessor is aware of and acknowledges the importance of Lessee's right of sole possession and quiet enjoyment of the Cars for the entirety of this Lease. Lessor represents: (A) that it is either the sole owner of the Cars or has the sole right and authority to lease the Cars as provided herein, (B) that Lessee is entitled to receive all car hire charges and/or mileage allowance payments that accrue when such Cars are off the lines of Lessee and, (C) no other party has any rights that might affect Lessee's rights to possession and peaceful enjoyment of the Cars under this Lease as long as Lessee

is in compliance with its obligations.

19. Car Modification. Should any Cars require modification pursuant to a regulation of the U.S. Department of Transportation or other agency having jurisdiction over the operation or use of the Cars, relative to Lessee's use of the Cars, Lessor may elect to do either of the following: (A) permanently delete the affected Cars from this Lease upon ninety (90) days' notice or (B) arrange to make the appropriate modifications at its expense. If the modifications are made by Lessor's expense, the Term for the Cars will be extended, without additional rental, by the number of days that the Cars are out of Lessee's service. If Lessor elects option (A), Lessee has forty-five (45) days from receipt of Lessor's notice within which to notify Lessor that Lessee will perform the appropriate modifications at its expense. If the modifications are made by Lessee at its expense, the Term for the Cars will be extended, at existing rental rates, by the number of days, rounded to the nearest whole, obtained by dividing the Lessee's total charges for performing the modification by the proportional daily rate for the Cars.

20. Notices. Unless otherwise provided, any notice sent pursuant to this Lease must be in writing sent by 1st Class U.S. Mail or confirmed telefax and addressed as follows:

To Lessor: Atlantic & Western Railway, L.P.
Attn: Vice President-Leasing
100 Professional Park, Suite 302
Carrolton, GA 30117

To Lessee: CSX Transportation, Inc.
Attn: Treasury Department J220
500 Water Street
Jacksonville, FL 32202

Either party may change its address upon notice to the other party.

21. Non-Waiver. The failure of either party to enforce any provision of this Lease or to prosecute any default shall not be considered as a waiver of that provision or as a bar to the prosecution of that default unless so indicated in writing.

22. Insurance. The Lessee will at all times during the term of this Lease, and until return of the Cars to Lessor, at its own expense, cause to be carried and maintained insurance or self-insurance retention in respect to its obligations assumed under this Lease in amounts and against such risks customarily insured against by comparable railroad companies. Lessee will annually furnish Lessor with a schedule of such coverage, upon written request.

23. UMLER. Lessee will be shown as the Lessee of the Cars in the AAR UMLER file.

24. Casualty Statement. The amounts contained on the attached casualty schedule will apply when Lessee is responsible for the payment of a Car that is destroyed or damaged beyond economic repair, as described in the Destruction of Car paragraph.

25. Entire Understanding. This Lease constitutes the entire understanding of the parties, has been drafted on a basis of mutual input, shall be construed pursuant to the laws of the State of Florida, and shall be binding upon the parties, their respective successors, assigns and legal representatives. It shall remain in full force and effect until all Cars have been tendered at the appropriate interchange point for return to Lessor. Any modification to this Lease must be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their duly authorized officials.

CSX TRANSPORTATION, INC.
(Lessee)

By: A. B. Miller
Title: Treasurer

ATLANTIC & WESTERN RAILWAY,
LIMITED PARTNERSHIP (Lessor)

By: Al Duden, President
General Partner
By: Rail Management + Consulting Corp.

SCHEDULE OF
CARS LEASED

40, 70-ton boxcars all having "CSXT" marks and having numbers
134215 through 134254, inclusive.

JAN-16-1994 12:17PM FROM ROY L BENSON

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P.03

SCHEDULE OF CASUALTY VALUE

(BASED ON THE VALUE OF \$12,000 FOR EACH CAR,
WHICH INCLUDES THE VALUE OF EACH CAR PLUS IMPROVEMENTS)

<u>After Lease Rental Payment No.</u>	<u>Casualty Value Payable</u>
1.....	95% of \$12,000
2.....	90% of \$12,000
3.....	85% of \$12,000
4.....	80% of \$12,000
5.....	75% of \$12,000
6 and thereafter.....	70% of \$12,000

STATE OF Florida
COUNTY OF Bay

I, the undersigned authority in and for said County and State,
hereby certify that K. Earl Durden

_____ whose name as
President of the Rail Management & Consulting Corp. a
Corporation, is signed to the foregoing conveyance, and who is
known to me, acknowledged before me on this day, that, being
informed of the contents of the conveyance, he, as such officer and
with full authority, executed the same voluntarily for and as the
act of said Corporation.

Given under my hand and official seal this 19 day of
April, 1994.

David Scott Helms

Notary Public



DAVID SCOTT HELMS
My Commission CC326324
Expires Oct. 25, 1997
Bonded by HAI
800-422-1555

On this 20th day of April, 1994, before me personally appeared A. B. Aftoora, to me personally known, who, by me being duly sworn, says that he is a Treasurer of CSX Transportation, Inc., and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Marlene H. Ross
Notary Public

My commission expires:

MARLENE H. ROSS
NOTARY PUBLIC, STATE OF FLORIDA
My commission expires Sept. 2, 1995
Commission No. CC140581
Bonded thru Patterson-Bacht Agency